

1 Paul J. Pascuzzi, State Bar No. 148810
Jason E. Rios, State Bar No. 190086
2 Thomas R. Phinney, State Bar No. 159435
Mikayla E. Kutsuris, State Bar No. 339777
3 FELDERSTEIN FITZGERALD
WILLOUGHBY PASCUZZI & RIOS LLP
4 500 Capitol Mall, Suite 2250
Sacramento, CA 95814
5 Telephone: (916) 329-7400
6 Facsimile: (916) 329-7435
Email: ppascuzzi@ffwplaw.com
7 jrios@ffwplaw.com
tphinney@ffwplaw.com
8 mkutsuris@ffwplaw.com

9 Ori Katz, State Bar No. 209561
Alan H. Martin, State Bar No. 132301
10 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
11 Including Professional Corporations
Four Embarcadero Center, 17th Floor
12 San Francisco, California 94111-4109
Telephone: (415) 434-9100
13 Facsimile: (415) 434-3947
Email: okatz@sheppardmullin.com
14 amartin@sheppardmullin.com
15

16 Attorneys for The Roman Catholic Archbishop of
San Francisco

17 UNITED STATES BANKRUPTCY COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19
20 SAN FRANCISCO DIVISION

21 In re
22 THE ROMAN CATHOLIC ARCHBISHOP
OF SAN FRANCISCO,

23 Debtor and
24 Debtor in Possession.

Case No. 23-30564

Chapter 11

25 Date: May 8, 2025
Time: 1:30 p.m.
Location: via Zoom
Judge: Hon. Dennis Montali

26
27 **DEBTOR'S RESERVATION OF RIGHTS IN RESPONSE TO MOTION FOR**
AN ORDER TO ENLARGE THE CLAIMS BAR DATE TO ALLOW
28 **FILING OF LATE PROOF OF CLAIM**

1 The Roman Catholic Archbishop of San Francisco, the debtor and debtor in possession
2 herein (the “Debtor”), hereby files this reservation of rights in response to the *Motion For An Order*
3 *To Enlarge The Claims Bar Date To Allow Filing of Late Proof of Claim* [ECF No. 1120] (the
4 “Motion”), filed by LL John Doe JU (“Claimant”) who is represented by the law firm of Liakos
5 Law, APC.

6 The Motion was filed on or about April 1, 2025, by counsel to the Claimant. Counsel for
7 the Debtor reviewed the Motion to understand the facts supporting the Claimant’s request to allow
8 his late filed proof of claim (“Claim”). The Debtor provides this response to include authorities that
9 have addressed the “excusable neglect” standards, including recent decisions in diocesan and other
10 pertinent cases, but is not taking a position as to whether the Claimant has made a sufficient showing
11 in this case.

12 I. SUMMARY OF ALLEGED UNDERLYING CLAIM

13 1. The Motion states that the Claimant is represented by Liakos Law, APC. Claimant’s
14 counsel filed a Master Complaint for Damages on December 12, 2022, and an Amended Master
15 Complaint for Damages on May 23, 2023. The Motion states that Claimant’s counsel utilizes case
16 management software to manage its cases, including the Claimant’s case. The Motion states that
17 Claimant’s counsel incorrectly entered the defendant’s name for Claimant’s case into its case
18 management software. As a result, it is alleged that Claimant’s counsel did not file a proof of claim
19 for the Claimant. On March 18, 2025, Claimant’s counsel discovered the error. The Motion was
20 filed on April 1, 2025.

21 2. Importantly, Movant’s claim was reflected in a filed state court complaint such that
22 the RCASF was aware of the claim prior to the bankruptcy case and scheduled the claim in its
23 schedules.

24 II. EXTENSIVE PUBLICATION OF FEBRUARY 20, 2024, CLAIMS BAR DATE

25 3. On November 21, 2023, the court entered its Order: (1) Fixing Time for Filing Proofs
26 of Claim; (2) Approving Proof of Claim Forms; (3) Providing Confidential Protocols; and (4)
27 Approving Form and Manner of Notice [ECF No. 337] (“Bar Date Order”). The Bar Date Order set
28 February 20, 2024, as the deadline to file proofs of claim. The Bar Date Order approved an extensive

1 notice and publication process in order to assure adequate notice to known and unknown claimants,
2 including extensive mailings, online noticing and numerous local and national newspapers.

3 4. As described in the Statement of Compliance with Noticing Provisions of Bar Date
4 Order [ECF No. 587] (“Statement of Compliance”), the Debtor has fully complied with Form and
5 Manner of Notice provisions of the Bar Date Order. In addition, as described in the Statement of
6 Compliance, the Debtor also has undertaken additional noticing measures, including substantial
7 publication in newspapers of general circulation in national and local markets, a press release of the
8 bankruptcy filing to over 9000 news organizations, and social media postings. See Declaration of
9 Peter Marlow at [ECF No. 587-1]. Thus, unknown creditors received notice of the February 20,
10 2024, bar date through an extensive notice and publication program approved by this Court.

11 5. Constructive notice can be satisfied through publication notice since “in the case of
12 persons missing or unknown, employment of an indirect and even a probably futile means of
13 notification is all that the situation permits and creates no constitutional bar to a final decree
14 foreclosing their rights.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950);
15 *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 490 (1988). Notice of the Bar
16 Date was proper and sufficient, including unknown claimants. Movant does not dispute that Notice
17 was adequate.

18 III. EXCUSABLE NEGLECT STANDARD

19 6. Bankruptcy Rule 9006(b)(1) provides that “...the court may—at any time and for
20 cause—extend the time to act if...on motion made after the specified period expires, the failure to
21 act within that period resulted from excusable neglect.” Fed. R. Bankr. P. 9006.

22 7. In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 113 S. Ct.
23 1489, 123 L. Ed. 2d 74 (1993), the Supreme Court provided that the “excusable neglect” standard
24 for Rule 9006(b)(1) governs late filings of proofs of claim in chapter 11 cases. *Id.* at 389. The
25 determination of what sorts of neglect will be considered “excusable”, “is at bottom an equitable
26 one, taking account of all relevant circumstances surrounding the party’s omission.” *Id.* at 395.
27 Under *Pioneer*, in considering whether the moving party has shown excusable neglect, the court
28 considers: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential

1 impact on judicial proceedings; (3) the reason for the delay, including whether it was within the
2 reasonable control of the movant; and (4) whether the movant acted in good faith. *Id.*

3 8. The factors are not exclusive, but rather, “provide a framework with which to
4 determine whether missing a filing deadline constitutes ‘excusable’ neglect.” *See Bateman v. U.S.*
5 *Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000). The Ninth Circuit has recognized that the correct
6 approach under *Pioneer* is to avoid any per se rule. *See Pincay v. Andrews*, 389 F.3d 853, 860 (9th
7 Cir. 2004) (*en banc*). The Ninth Circuit “leave[s] the weighing of *Pioneer*’s equitable factors to the
8 discretion of the...court in every case.” *Id.*

9 9. The Supreme Court in *Pioneer* found that “in determining whether respondents’
10 failure to file their proofs of claim prior to the bar date was excusable, the proper focus is upon
11 whether the neglect of respondents *and their counsel* was excusable.” *Pioneer*, 507 U.S. at 397.
12 The Court reasoned that “respondents [must] be held accountable for the acts and omissions of their
13 chosen counsel.” *Id.* at 397. The Supreme Court, recounted its prior holding in *Link v. Wabash R.*
14 *Co.*, 370 U.S. 626, 82 S Ct. 1386, 8 L. Ed. 2d 734 (1962)) stating, “[i]n other contexts, we have held
15 that clients must be held accountable for the acts and omissions of their attorneys” and, noted that
16 the Supreme Court in *Link v. Wabash R. Co.* wrote:

17 “Petitioner voluntarily chose this attorney as his representative in the action,
18 and he cannot now avoid the consequences of the acts or omissions of this freely
19 selected agent. Any other notion would be wholly inconsistent with our system
20 of representative litigation, in which each party is deemed bound by the acts of
his lawyer-agent and is considered to have ‘notice of all facts, notice of which
can be charged upon the attorney.’”

21 *Pioneer*, 507 U.S. at 397 (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 633-34, 82 S Ct. 1386, 8 L.
22 Ed. 2d 734 (1962)).

23 10. In *In re The Roman Catholic Diocese of Rockville*, No. 20-12345 (Bankr. S.D.N.Y.
24 July 12, 2023) [ECF No. 2293], the court addressed a similar motion for claims filed over a year
25 after the bar date, looking in particular at the reason for the delay relating to the discovery of claims
26 and the promptness in taking action thereafter. The court found that the reason for delay was fully
27 within the control of the claimants, and “while the offered reason for delay is a sympathetic one, the
28 equities do not weigh in favor of permitting the late-filed claims to proceed.” *Id.* at *23. Although

1 the Second Circuit gives the most weight to the third factor under *Pioneer*, the Ninth Circuit leaves
2 the weighing of *Pioneer*'s factors to the discretion of the court. See *Alexander v. Saul*, 5 F.4th 139,
3 149 and n. 5 (2nd Cir. 2021) (stating that, "[a]ffording dispositive weight to [the third] factor accords
4 with our precedents, which have described the reason for the delay as the most important *Pioneer*
5 factor" (collecting cases)); see also *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004) (en banc)
6 (stating that, "we leave the weighing of *Pioneer*'s equitable factors to the discretion of the...court
7 in every case").

8 11. In *Pincay v. Andrews*, the Ninth Circuit declined to second guess the lower court's
9 findings stating, in pertinent part:

10 We recognize that a lawyer's failure to read an applicable rule is one of the least
11 compelling excuses that can be offered; yet the nature of the contextual analysis
12 and the balancing of the factors adopted in *Pioneer* counsel against the creation
13 of any rigid rule. Rather, the decision whether to grant or deny an extension of
14 time to file a notice of appeal should be entrusted to the discretion of the district
15 court because the district is in a better position than we are to evaluate factors
16 such as whether the lawyer had otherwise been diligent, the propensity of the
17 other side to capitalize on petty mistakes, the quality of representation of the
18 lawyers (in this litigation over its 15-year history), and the likelihood of
19 injustice if the appeal was not allowed. Had the district court declined to permit
20 the filing of the notice, we would be hard pressed to find any rationale requiring
21 us to reverse.

22 *Pincay v. Andrews*, 389 F.3d at 859.

23 IV. RESERVATION OF RIGHTS

24 12. If the Court grants the Motion, the Debtor reserves all rights with respect to the Claim
25 and requests inclusion of language specifying the same in the order granting the Motion. The Debtor
26 requests that the following language be included in any order to: (a) reserve all parties' rights to
27 raise and pursue any and all applicable objections and defenses to the Claim, including without
28 limitation any time-bar or statute of limitations defenses (other than timeliness of filing a proof of
claim), and; (b) reserve all parties' rights with respect to *other* claims not filed prior to the February
20, 2024, Bar Date, for which a corresponding motion to allow late-filed claim(s) has not yet been
filed or pursuant to any other pending motions:

1 Nothing herein shall be construed to impair or diminish in any way the rights
2 of any party, including the Debtor, to object to the Claim, and to the alleged
3 claim of Claimant, on any grounds, except for the timeliness of the filing of the
4 Claim, pursuant to Federal Rule of Bankruptcy Procedure 3007 or any other
5 applicable law, or any procedure approved by the Bankruptcy Court with
6 respect to the same. All parties' rights and defenses with respect to any
7 objection to Claim are expressly reserved, including without limitation any
8 time-bar or statute of limitations defenses (other than timeliness of the filing of
9 the Claim). Nothing herein shall be construed to impair or diminish in any way
10 the rights of any party, including the Debtor, to object to *other* claims not filed
11 prior to the February 20, 2024, Bar Date, for which a corresponding motion to
12 allow late-filed claim(s) is pending or has not yet been filed, on any grounds.

13 All parties' rights and defenses with respect to *other* claims not timely filed by
14 the February 20, 2024, Bar Date are expressly reserved, including without
15 limitation any time-bar or statute of limitations defenses (including the
16 timeliness of the filing of the *other* claims).

17 13. If the Court grants the Motion, the Debtor requests that the Court set a specific date
18 by which the claim must be properly filed, with such date being approximately 30 days after the
19 entry of an order on the Motion.

20 Dated: April 24, 2025

FELDERSTEIN FITZGERALD WILLOUGHBY
PASCUZZI & RIOS LLP

21 By: /s/ Paul J. Pascuzzi
22 Paul J. Pascuzzi
23 Jason E. Rios
24 Thomas R. Phinney
25 Mikayla E. Kutsuris
26 Attorneys for The Roman Catholic
27 Archbishop of San Francisco

28 Dated: April 24, 2025

SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP

By: /s/ Ori Katz
Ori Katz
Alan H. Martin
Attorneys for The Roman Catholic
Archbishop of San Francisco